42 together with the definition. Section 45 confirms this construction.

In view of this it is, we think, unnecessary to consider whether, if the Order in Council had failed to make the proclamations into law, subsequent legislation in the Colony had had that effect.

Appeal dismissed.

REX v. LEE AH PHUA & 2 OTHERS.

[App. Crim. Juris. (Murray-Aynsley, C.J.) January 20, 1950]

[Singapore — Special Case No. 6 of 1949]

Criminal Procedure — Holding a view of the scene — Purpose and scope of.

In this case the accused were charged as follows:—

"That you on or about 9 p.m. on the 21.11.49, in house No. 844-16, Upper Serangoon Road, Singapore, did assist in the carrying on of a public lottery to wit Chap Ji Ki and that you have thereby committed an offence punishable under Sec. 4(c) Cap. 30."

The accused who appeared in person claimed trial and were released on bail, the case being set down for hearing on the 12th December 1949. The Prosecutor invited the Court to visit the scene at the earliest possible opportunity alleging that there were certain temporary erections in the house concerned, which would be relevant to raise presumptions under s. 15 of the Common Gaming Houses Ordinance (Cap. 30), and were likely to be removed by the accused if the view were delayed. The Police Magistrate viewed the scene on the afternoon of the same day observing all proper precautions. One of the witnesses of the prosecution drew the attention of the Magistrate to a pasteboard door, which was invisible from outside and which could only be opened or closed from inside, a steep ladder, a pasteboard wall, a pasteboard sliding door, and a pasteboard ceiling trap-door which could be bolted only from the top (attic). The first accused also drew the Magistrate's attention to two particular points in the attic. Second and third accused were present. Both parties informed the Magistrate that he should note these things since evidence would be given concerning them. On the 12th December 1949, Messrs. F. B. Oehlers and Tampoe Phillips appeared in Court as Counsel for the accused, and submitted objections to his hearing of the case and accordingly the Police Magistrate transferred this case to another Court.

In a special case stated by the learned Magistrate the High Court was asked for its opinion on the following questions:—

(1) whether a Court may view a **locus in quo** before the hearing of the charge;

(2) whether a Court may do so before the accused have had opportunity of engaging Counsel;

(3) whether it would be an irregularity or an illegality if the answers to (1) or (2) or both are in the negative.

Held, that a view should take place only after the hearing has began and its scope should be limited to an examination of the place. A view should only be used for the purpose of examination of what may be called the permanent features of the place. For merely temporary features, e.g. the position of marks on a road, full use should be made of plans and photographs coupled with the oral evidence of reliable witnesses. If a view attempts to do more than this, there is always the objection that the judge is being converted into a witness.

Case referred to:—

(1) *London General Omnibus Co. v. Lavell* (1901) 1 Ch. 135.

SPECIAL CASE.

A. H. Simpson (D. P. P.) for the Crown.

Murray-Aynsley, C. J.: — There is no express statutory authority for holding a view in criminal cases except section 208 which only deals with trials by jury. It has however been decided that it is not illegal for Magistrates and District Judges to visit the *locus in quo* concerned in any case which they have to try.

The practice of holding views has been common in England and elsewhere for many years but there is very little authority on the subject. The only observations of general import on the subject are to be found in *London General Omnibus Co. v. Lavell*[1].

There Lord Alverstone said (at p. 138) "... a very undesirable and erroneous practice might grow up with reference to the viewing or seeing by the judge of the subject-matter of the action ..... I should be very sorry to endorse the idea, that a judge is entitled to put a view in the place of evidence. A view, as I have always understood, is for the purpose of enabling the tribunal to understand the questions that are being raised, to follow the evidence, and to apply the evidence."

I think that a view should take place only after the hearing has begun. Its scope should be limited to an examination of the place. All that should be said should be for the purpose of identification of the site, as in section 208, and this preferably by a person already sworn as a witness.

A view should only be used for the purpose of examination of what may be called the permanent features of the place. For merely temporary features such as e.g. those indicated in the present case, or in other cases, the position of marks on the road, or of the body of a deceased person, full use should be made of plans and photographs coupled with the oral evidence of reliable witnesses.

If a view attempts to do more than I have indicated, there is always the objection that the judge is being converted into a witness. There is also the possibility that the Magistrate present at the view may not be available for the ultimate hearing of the case if the view is held before the hearing, and also if the Magistrate forms his opinion otherwise than on evidence there will not be a proper record for a Court hearing an appeal.

Order accordingly.